May 22, 2023

Via Electronic Mail

The PJM Board of Managers
c/o Mark Takahashi, Chairman
c/o Manu Asthana, PJM President and CEO
PJM Interconnection L.L.C.
2750 Monroe Boulevard
Audubon, Pennsylvania 19408

Dear Mr. Takahashi and Mr. Asthana,

On May 17, 2023 you received a correspondence from multiple parties requesting that the PJM Board exercise its independent judgment and not file modifications to the capacity penalty rate, penalty stop-loss, and penalty triggers which were endorsed by the PJM Members Committee on May 11, 2023. For many of the reasons expressed in that correspondence the state consumer advocate offices identified in this letter agree and ask that the PJM Board refrain from making the filing.

Most importantly, the state consumer advocate offices have significant concerns that the proposed penalty reductions will undermine reliability in the region. These concerns were only heightened after PJM staff, repeatedly and explicitly, expressed concerns regarding core elements of the Proposed Penalty Reductions during the limited stakeholder discussions.

PJM's initial Capacity Performance filing at FERC on December 12, 2014 PJM proposed a series of tariff reforms to ensure that resources committed as capacity to meet the PJM region's reliability needs will deliver the promised energy and reserves when called upon.[1] That filing recognized the need to include stronger penalties as part of the equation.

Thereafter, The Federal Energy Regulatory Commission (FERC) approved PJM's Capacity Performance filing on June 9, 2015 stating, in part, "PJM has convincingly argued [] that its current construct fails to provide appropriate incentives and penalties…."[2] To achieve the reliability goal of Capacity Performance PJM proposed a significant increase in penalties that FERC approved.[3] To reduce the penalties by tenfold without further changes and reasonable time to review is a mistake.

The abridged 15-day, four meeting PJM stakeholder "process"[4] selectively dissects certain aspects of PJM Capacity Performance construct – the penalties – without allowing reasonable time for discussion or adequate information to be provided on the impact of this decision. In addition, recently, PJM staff included core components of the proposal (e.g. Performance Assessment Interval (PAI) penalties and participant financial risks) as important areas to evaluate after

[1] Reforms to the Reliability Pricing Market ("RPM") and Related Rules in the PJM Open Access Transmission Tariff ("Tariff") and Reliability Assurance Agreement Among Load Serving Entities ("RAA"), (Dec. 12, 2014) FERC Dkt. No. ER15-623, eLibrary No. 20141212-5126.

[2] Order on Proposed Tariff Revisions (Jun. 9, 2015) FERC Dkt. No. ER15-623, eLibrary No. 20150609-3067, at ¶ 8.

[3] "[W]e find that PJM's proposed Non-Performance Charge, and the mechanics by which it will be applied, will provide incentive to capacity sellers to invest in and maintain their resources by tying capacity revenues more closely with real-time delivery of energy and reserves during emergency system conditions." Id. at ¶ 158.

[4] The Capacity Performance Penalty Rate proposal was introduced on Wednesday, April 26, 2023 as a quick fix item at the PJM Markets & Reliability Committee (MRC) meeting. It was subsequently discussed on May 1 at the Members Committee, discussed, voted upon, and passed at the Special MRC on May 4 and passed at the May 11 MC. Process is in quotes because it is hard to understand what, if any, process this situation followed.

Winter Storm Elliott.[5] PJM staff stated that the full Winter Storm Elliott report will be issued in Mid-July.[6] Thus, consumer advocates – and all stakeholders – are making decisions without anywhere near the level of information that should be relied upon to make such important decisions.

The current penalty structure was a key component of PJM's 2014 Capacity Performance filing. Modifying one component without an opportunity to discuss other aspects would be a mistake. It has been stated that consumers have paid billions of dollars for the enhanced reliability measures afforded by the existing Capacity Performance construct. While the stakeholder approved proposal modifies the risks for resources, it does nothing to ensure reliability or ensure consumers are getting fair value for the overall construct.

Consumers rely on well-reasoned markets for reliability at reasonable prices. Unfortunately, these changes were not well thought out and can undermine so much of what PJM markets have accomplished. Thus, in this situation, we are asking PJM to exercise its independence and not file the retroactive changes to capacity market rules.

Sincerely,

Dave Kolata
Illinois Citizens Utility Board

Brian O. Lipman
New Jersey Division of Rate Counsel

Dave Evrard
Pennsylvania Office of Consumer Advocate

Robert F. Williams
Director, Consumer Advocate Division
Public Service Commission of WVA

Bill Fields
Maryland Office of People's Counsel

Ruth Ann Price
Deputy Public Advocate
Delaware Division of the Public Advocate

Chris Ayers
Public Staff – North Carolina Utilities Commission

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[5] PJM Resource Adequacy – Critical Issue Fast Path Stakeholder meeting, item 2, May 17, 2023, "WS Elliott Recommendations: Capacity Markets, pages 4 & 5.

[6] PJM Resource Adequacy – Critical Issue Fast Path Stakeholder meeting, item 2, May 17, 2023, "WS Elliott Recommendations: Capacity Markets, page 12.